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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number:

05918-340001 / VGCP No. 6020

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450.

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Signature

Sherry L. Hunt

Typed or Printed Name of Person Signing Certificate

Application Number

10/688,320

First Named Inventor

Mark A. Clamer

Art Unit

3677

Filed

October 15, 2003

Examiner

Robert Sandy

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

I am the.

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applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

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attorney or agent of record

(Reg. No.) 42,276

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34.

Signature

James W. Babineau

Typed or printed name

(617) 542-5070

Telephone number

April 7, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒

Total of 5 pages are being submitted (including this page)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Mark A. Clamer  
Serial No. : 10/688,320  
Filed : October 15, 2003  
Title : MULTIPLE-CROOK MALE TOUCH FASTENER ELEMENTS

Art Unit : 3677  
Examiner : Robert J. Sandy

**MAIL STOP AF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REMARKS SUBMITTED WITH PRE-APPEAL BRIEF REQUEST FOR REVIEW

A request for a review of identified matters on appeal is hereby submitted with a Notice of Appeal. Review of identified matters by a panel of Examiners is requested because the rejections of record are clearly not proper in view of clear legal and factual deficiencies. In particular, Applicant submits that all claim rejections stem from an improper scaling of the drawings of Akeno, U.S. Patent No. 5,781,969 ("Akeno") and/or improper inferences about the location of the bottom of the "V" of Akeno's sketched fastener element. Applicant submits that this is clearly improper in view of established case law.

Claims 1-3, 6-9, 11-13, 15-17, 25-28, 31-34, 36, 37, 46-49, 51-55, 61-63, 65-68 and 76-79 have been rejected as being anticipated by Akeno.

Claim 1 requires, in pertinent part, a height of a lowermost extent of the well (G) that is less than 60 percent of an overall height (A) of the fastener element (i.e.,  $G/A < 0.6$ ). On page 4 of the Office Action, the Examiner reproduces FIG. 4B (shown below) of the Akeno disclosure and contends that the drawing shows a height of a lowermost extent of the well that is less than 60 percent of an overall height of the fastener element.

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April 7, 2006

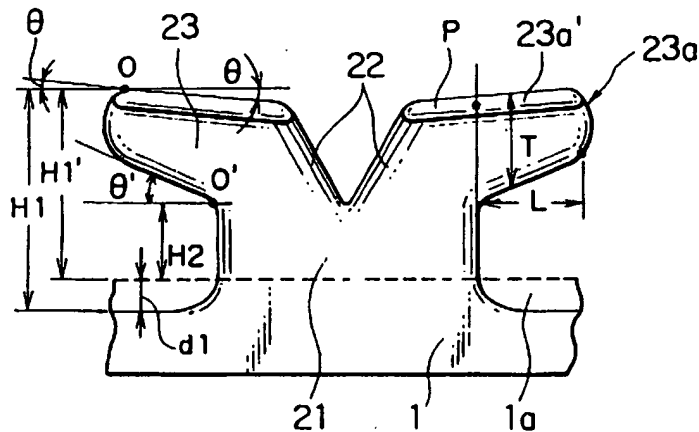
Date of Deposit

Signature

Sherry L. Hunt

Typed or Printed Name of Person Signing Certificate

**FIG. 4B**



Apparently, the Examiner has come to this conclusion by simply extending the line that passes through O' and that is parallel to the base of the fastener at a height H2 across the stem to the bottom of the "V" between the heads (see FIG. 4B above). In other words, the Examiner has equated H2 with a height of the lowermost extent of the well. This is improper because there is no disclosure in Akeno that places the "V" in the location suggested by the Examiner. A rejection based on relative measurements taken from the figures is improper absent some indication that the drawings are to scale. Akeno provides no such indication, nor does he provide any indication of the location of the well with respect to the location of other features of the fastener element such as O'. In fact, the only disclosure in Akeno regarding the "V" between the heads is found at column 10, line 62 through column 11 line 6. Here Akeno states that it can be located in a desired position. As Akeno does not disclose all features recited in claim 1, Applicant respectfully submits that claim 1, and all claims that depend therefrom, are novel over Akeno.

Independent claim 27 requires, in pertinent part, a ratio of an overall height (J) of at least one of the heads to a height of a lowermost extent of the well (G) that is greater than 0.7 (i.e.,  $J/G > 0.7$ ). Here, too, the Examiner's conclusion of anticipation by Akeno is based on improper scaling of patent drawings to ascertain the location of the bottom of the "V" of Akeno.

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Applicant respectfully submits that claim 27, and all claims that depend therefrom, are novel over Akeno.

Independent claim 48 requires, in pertinent part, a ratio of an overall length (L) of the fastener element to a height of a lowermost extent of the well (G) that is greater than 2.5 (i.e.,  $L/G > 2.5$ ). Again, the Examiner's conclusion is based solely on improper scaling of patent drawings in contradiction of established case law. Applicant respectfully submits that claim 48, and all claims that depend therefrom, are novel over Akeno.

Independent claim 61 requires, in pertinent part, that each fastener element have a mold release factor, that is less than 0.1 (ie.,  $MRF < 0.1$ ). Again, the Examiner has inferred undisclosed information from the drawings. Since the location of the bottom of Akeno's "V" is indeterminate, it is not possible to find the maximum solid length from Akeno's disclosure. Thus, it is simply not possible to calculate a MRF for Akeno's fastener elements from the information contained in the Akeno reference. Applicant respectfully submits that claim 61, and all claims that depend therefrom, are novel over Akeno.

Furthermore, since Akeno states that the "V" can be located at a desired position, it is apparent that Akeno saw no particular significance in the depth of his well. Thus, after reading Akeno, one of ordinary skill in the art would not have been led to consider the specific relationships recited in independent claims 1, 27, 48 and 61.

Dependent claims 5, 14, 24, 30, 45, 50, 60 and 64 have been rejected as being obvious over Akeno; dependent claims 24, 45 and 60 have been rejected as being obvious over Akeno in view of Romanko, U.S. Patent No. 6,484,371 ("Romanko"); and dependent claims 10 and 35 have been rejected as being obvious over Akeno in view of Takizawa, U.S. Patent No. 5,537,720 ("Takizawa"). The list of claims rejected as obvious suggests that these rejections too are based upon an improper finding that Akeno fairly discloses all of the features of the base claims discussed above.


Enclosed is a \$120.00 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050, referencing Attorney Docket No. 05918-340001.

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Respectfully submitted,

Date: April 7, 2006

  
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James W. Babineau  
Reg. No. 42,276

Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110-2804  
Telephone: (617) 542-5070  
Facsimile: (617) 542-8906  
21295880.doc